STATE OF MICHIGAN

COURT OF APPEALS

MUSTAQUEEN SHABAZZ,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 2, 2001

No. 219427
Wayne Circuit Court
LC No. 97-738808-NO

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendant's motion for summary disposition and denying his motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when he tripped on a defective sidewalk within defendant's municipal boundaries. Plaintiff filed suit alleging that defendant negligently failed to maintain the sidewalk in a reasonably safe condition, that defendant knew or should have known of the condition of the sidewalk, and that defendant was liable under the highway exception to governmental immunity. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that it could not be liable under the highway exception to governmental immunity because it did not have actual or constructive knowledge of the defective condition of the sidewalk. The trial court granted the motion. In so doing, the trial court declined to consider photographs of the sidewalk offered by plaintiff but not submitted with his response to defendant's motion. Subsequently, the trial court denied plaintiff's motion for reconsideration.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition and abused its discretion by denying his motion for reconsideration. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Cason v Auto Owners Ins Co*, 181 Mich App 600, 609; 450 NW2d 6 (1989).

The highway exception to governmental immunity requires a governmental agency having jurisdiction over a highway to maintain the highway in a condition that is reasonably safe

and convenient for public travel. MCL 691.1402(1); MSA 3.996(102)(1). The definition of "highway" includes sidewalks. MCL 691.1401(e); MSA 3.996(101)(e). A municipality is required to maintain sidewalks within its jurisdiction in a reasonably safe condition. *Figueroa v Garden City*, 169 Mich App 619, 623; 426 NW2d 727 (1988). A governmental agency is not liable for injuries caused by a defective highway unless the agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury occurred. MCL 691.1403; MSA 3.996(103); *McKeen v Tisch (On Remand)*, 223 Mich App 721, 725-726; 567 NW2d 487 (1997). Such knowledge is conclusively presumed if the defect existed in a condition so as to be readily apparent to an ordinarily observant person for a period of thirty days or more prior to the injury. *Id.* at 726.

Here, plaintiff acknowledged that he did not know how long the defect had existed. He presented no evidence regarding the length of time the defect had existed, and did not show that the defect had been reported to defendant. Plaintiff's reliance on *Haas v Ionia*, 214 Mich App 361; 543 NW2d 21 (1995), is misplaced. In that case, another panel of this Court held that the defense of an open and obvious danger does not apply when liability is premised on a statutory duty to maintain a sidewalk in a reasonably safe condition. Plaintiff failed to present any evidence to create a question of fact as to whether defendant had actual or constructive knowledge of the defective condition of the sidewalk. The trial court properly granted summary disposition.

Furthermore, the trial court did not abuse its discretion by denying plaintiff's motion for reconsideration. When granting defendant's motion for summary disposition, the trial court stated that it could not determine from plaintiff's proffered pictures that the defect had been in existence for more than thirty days, and we do not disagree. Plaintiff offered no expert or other testimony to aid in the interpretation of the pictures. The result would not have changed had the trial court granted the motion and considered the pictures. MCR 2.119(F)(3).

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White